

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
EchoStar Satellite Corporation)	File Nos. 167-SAT-P/LA-95;
)	168-SAT-P/LA-95;
Application for Authority to Construct,)	54-SAT-AMEND-96;
Launch, and Operate a Ka-band Satellite System)	SAT-MOD-20010608-00055
in the Fixed-Satellite Service)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 7, 2002

Released: November 8, 2002

By the Chief, International Bureau:

1. By this Order, we reconsider our previous determination that EchoStar Satellite Corporation (“EchoStar”) failed to satisfy its initial, mandatory implementation milestone set forth in its authorization for its Ka-band satellite system.¹ EchoStar has subsequently presented sufficient evidence to demonstrate that it is constructing and implementing an operational Ka-band system. In light of this additional evidence, we reverse our prior determination and reinstate EchoStar’s authorization.

2. In May 1997, as part of the first Ka-band processing round, the International Bureau (“Bureau”) authorized EchoStar to launch and operate a geostationary satellite orbit (“GSO”) system to provide fixed-satellite service in the Ka-band.² When we authorized EchoStar’s system, we deferred imposing a milestone schedule for system implementation until after EchoStar was assigned a specific range of frequencies for its proposed inter-satellite links (“ISLs”). In January 2001, the Bureau authorized EchoStar to operate ISLs and assigned it specific ISL frequencies.³ At that time we also assigned implementation milestones for the construction, launch, and operation of the satellite system. The first implementation milestone required EchoStar to commence construction of its first satellite by January 2002. The license provides that failure to meet any of the implementation milestones renders the satellite authorization null and void.⁴

3. In the *EchoStar Cancellation Order*, we determined that the contract between EchoStar and its satellite manufacturer, Space Systems/Loral (“Loral”), was insufficient to satisfy the

¹ See EchoStar Satellite Corp., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Memorandum Opinion and Order*, DA 02-1534, 17 FCC Rcd 12780 (Int’l Bur. 2002) (*EchoStar Cancellation Order*).

² See EchoStar Satellite Corp., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, DA 97-969, 13 FCC Rcd 5664 (Int’l Bur. 1997) (*EchoStar Authorization Order*).

³ See EchoStar Satellite Corp., Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, *Order and Authorization*, DA 01-224, 16 FCC Rcd 2453 (Int’l Bur. 2001) (*EchoStar Modification Order*).

⁴ See *id.* at 2459.

Commission's first implementation milestone.⁵ The contract related to the construction of a hybrid Ku-/Ka-band satellite, EchoStar 9.⁶ We found that the contract neither committed Loral to construct a Ka-band subsystem nor guaranteed operation of the Ka-band transponders even if constructed.⁷ Based on the documentation presented, we determined that the Ka-band package would be able to operate only under certain limited conditions that may never occur. As a result, we found that the contract did not satisfy the construction commencement milestone in EchoStar's Ka-band license.⁸

4. EchoStar petitions for reconsideration of our determination and presents additional evidence not previously presented that the Ka-band subsystem is being constructed and that the transponders on the hybrid satellite will be operational.⁹ Most significantly, EchoStar has submitted the power budget for the satellite, which shows that Loral has designed the satellite with sufficient resources to operate the entire Ka-band payload – in addition to the Ku- and C-band payloads – at saturated levels throughout the satellite's operating lifetime.¹⁰ EchoStar has also supplied photographs of the Ka-band payload to support its assertion that construction of the Ka-band system has not only commenced, but is in fact nearing completion.¹¹ Finally, EchoStar has provided documentation that shows that it is progressing towards the launch of the payload in the fourth quarter of 2002.¹²

5. In light of the additional evidence presented by EchoStar, we are persuaded that the Ka-band subsystem on the satellite under construction will be operational and accordingly grant EchoStar's petition for reconsideration. As a general rule, petitions for reconsideration may not be granted based on new facts that were not previously provided to the Commission.¹³ An exception to this general rule is explicitly made, however, if consideration of the new facts is required in the public interest.¹⁴ This is the case here. EchoStar's additional information clarifies facts that existed at the time of its milestone deadline. Had EchoStar provided information about the power budget of its satellite earlier as part of its initial milestone demonstration, there would have been sufficient evidence at the time of our milestone review to conclude that the Ka-band payload of the satellite would be supplied with enough power to operate and that EchoStar had therefore met its first milestone. The public interest in seeing EchoStar's Ka-band services brought to the public outweighs any harm caused by EchoStar's failure to provide this information as part of its initial milestone compliance demonstration. We therefore reverse our previous

⁵ See *EchoStar Cancellation Order*, 17 FCC Rcd at 12782.

⁶ In addition to Ku- and Ka-band transponders, Loral is constructing a C-band payload on the satellite, which is intended for operation by another non-U.S.-licensed entity. The construction status of the C-band payload is unrelated to EchoStar's milestone compliance and is not relevant to this Order.

⁷ See *EchoStar Cancellation Order*, 17 FCC Rcd at 12782.

⁸ See *id.* See also *Norris Satellite Communications Inc., Application for Review of Order Denying Extension of Time to Construct and Launch Ka-Band Satellite System, Memorandum Opinion and Order*, FCC 97-377, 12 FCC Rcd 22299, 22303-04 (1997).

⁹ See *EchoStar Satellite Corp., Petition for Reconsideration*, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96; SAT-MOD-20010608-00055 (filed July 25, 2002).

¹⁰ See *id.* at Exhibit 3. A transponder operating in the saturated condition consumes its maximum possible level of power.

¹¹ See *id.* at Exhibit 2.

¹² See *id.* at Exhibit 1.

¹³ See 47 C.F.R. § 1.106(c) (2001).

¹⁴ See *id.* at § 1.106(c)(2).

determination and reinstate EchoStar's Ka-band license.¹⁵

6. The *EchoStar Cancellation Order* also dismissed as moot EchoStar's application to modify its Ka-band payload to construct a Ku-/Ka-band hybrid satellite.¹⁶ Because this dismissal was premised on the cancellation of EchoStar's underlying authorization, the reinstatement of EchoStar's authorization also revives the related modification application. As a result, EchoStar's application to modify its Ka-band payload is no longer moot and will be addressed in a separate order.

7. Accordingly, IT IS ORDERED, that the authorization granted to EchoStar Satellite Corporation, File Nos. 167-SAT-P/LA-95; 168-SAT-P/LA-95; 54-SAT-AMEND-96 and accompanying orbital assignments granted in EchoStar Satellite Corporation, 13 FCC Rcd 5664 (Int'l Bur. 1997) are REINSTATED.

8. IT IS FURTHER ORDERED, that EchoStar Satellite Corporation's Application for Minor Modification of Authorization to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, File No. SAT-MOD-20010608-00055, will be considered in a separate order.

9. This Order is issued pursuant to delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson
Chief
International Bureau

¹⁵ This action is conditioned on favorable action on EchoStar's pending modification application. See *infra* note 16 and accompanying text.

¹⁶ See EchoStar Satellite Corp., Application for Minor Modification of Authorization to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, File No. SAT-MOD-20010608-00055 (filed June 8, 2001).